

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CLC

WINIFRED B. WECHSLER & JEFFREY)	
WASSERMAN,)	
)	
Petitioners,)	
)	
v.)	Docket No. 3916-15S
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

ORDER

This case for the redetermination of a deficiency is before the Court on petitioners' motion to dismiss for lack of jurisdiction, filed May 19, 2015. According to petitioners, the Court lacks jurisdiction in this case because the notice of deficiency that forms the basis for this case is invalid. Respondent's objection to petitioners' motion is embodied in his response, filed July 7, 2015.

In a notice of deficiency dated November 13, 2014 (notice), respondent determined a deficiency in, and imposed a section 6662(a)¹ penalty with respect to, petitioners' 2011 Federal income tax. The petition, timely filed on February 10, 2015, in response to the notice, challenges the deficiency as well as the penalty. Respondent's answer, filed April 1, 2015, concedes no error with respect to the determinations made in the notice.

The Tax Court is a court of limited jurisdiction and may exercise that jurisdiction only to the extent authorized by Congress. Sec. 7442; Naftel v. Commissioner, 85 T.C. 527, 529 (1985). The Court has jurisdiction to redetermine a taxpayer's Federal tax liability in a deficiency proceeding if the Commissioner has issued a valid notice of deficiency and the taxpayer has timely filed a petition. Secs. 6212, 6213; Rule 13(a), (c). If a valid notice of deficiency has not been issued, then a case commenced under section 6213(a) must be dismissed for lack

¹Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

SERVED Jul 28 2015

of jurisdiction on that ground. See Monge v. Commissioner, 93 T.C. 22, 27 (1989).

It is well settled that no particular form is required for a notice of deficiency to be valid. See Benzvi v. Commissioner, 787 F.2d 1541, 1542 (11th Cir. 1986); Jarvis v. Commissioner, 78 T.C. 646, 655 (1982). A notice of deficiency is valid if the Commissioner demonstrates that “the IRS has determined that a deficiency exists for a particular year and specify the amount of the deficiency.” Stoecklin v. Commissioner, 865 F.2d 1221, 1224 (11th Cir. 1989) (quoting Benzvi v. Commissioner, 787 F.2d at 1542). The Court of Appeals for the Ninth Circuit has held that “the Commissioner need not explain how the deficiencies were determined.” Scar v. Commissioner, 814 F.2d 1363, 1367 (9th Cir. 1987) (citing Barnes v. Commissioner, 408 F.2d 65, 68 (7th Cir. 1969), aff’d T.C. Memo. 1967-250).

Petitioners argue that the notice is invalid because it fails to comply with the Administrative Procedures Act (APA). Specifically, petitioners contend that the notice is subject to the judicial review procedures embodied in SEC v. Chenery, 332 U.S. 194 (1947). According to petitioners, the notice is an arbitrary and capricious action due to respondent’s failure to provide an explanation for the action as required by the APA.

Pointing out that the Internal Revenue Service is treated no differently than any other agency for purposes of the APA, petitioners rely upon Mayo Found. For Med. Educ. & Research v. United States, 562 U.S. 44 (2011), in which the Supreme Court stated, “we [the Supreme Court] are not inclined to carve out an approach to administrative review good for tax law only.” Mayo Found. for Med. Educ. & Research v. United States, 562 U.S. at 55. Petitioners’ reliance on Mayo, however, is misplaced; Mayo dealt with agency rulemaking. Nothing in the Mayo opinion suggests that a notice of deficiency is invalid because the Commissioner failed to include explanatory information in it. Moreover, this Court has held that the APA does not modify provisions of the Internal Revenue Code. See, e.g., Porter v. Commissioner, 105 T.C. 115, 131 (2008) (“[T]he APA does not limit or repeal our de novo review procedures.”); Alfieri v. Commissioner, 60 T.C. 296, 299 (1973), aff’d 487 F.2d 1393 (2d Cir. 1973). In this respect, the specific procedures that Congress has prescribed for this Court in the Internal Revenue Code may differ from the more general rules embodied in the APA.

Petitioners’ reliance on SEC v. Chenery Corp. is also misplaced. According to that case, “a reviewing court, in dealing with a determination or judgment which

an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.” SEC v. Chenery Corp., 332 U.S. at 196. While this Court has applied Chenery in reviewing notices of determination concerning collection action in collection proceedings brought under section 6330(d), see, e.g., Antioco v. Commissioner, T.C. Memo. 2013-35, at *24; Salahuddin v. Commissioner, T.C. Memo. 2012-141, we have never applied Chenery in the context of a deficiency case. It is well established that deficiency cases are reviewed de novo, and, except in limited circumstances, the Court does not look behind the notice of deficiency. See Greenberg’s Express, Inc. v. Commissioner, 62 T.C. 324 (1974). In a deficiency case, the Court’s “determination as to a petitioner’s tax liability must be based on the merits of the case and not any previous record developed at the administrative level.” Id. at 328. Consequently, Chenery is inapplicable in this case.

It follows and is

ORDERED that petitioners’ motion is denied.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
July 28, 2015